

DRAFT

INTERLOCAL AGREEMENT
FOR MUNICIPAL SOLID WASTE COLLECTION, BILLING, AND DISPOSAL

THIS INTERLOCAL AGREEMENT is made and entered into this ____ day of _____, 2015, by and between LEE COUNTY, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners, the governing body thereof, hereinafter "County, and the VILLAGE OF ESTERO, a municipal corporation of the State of Florida, acting by and through its Village Council, the governing body thereof, hereinafter "VILLAGE", and collectively, "the Parties" hereto.

WITNESSETH:

WHEREAS, the Board of County Commissioners is the governing body in and for Lee County; and the Village Council is the governing body in and for the Village of Estero; and,

WHEREAS, the County and Village desire to cooperate with each other in the Management of Municipal Solid Waste (MSW); including Collection, Billing, Customer Services and Disposal Services; and

WHEREAS, the Village desires to cooperate with the County for a debris management sites in the event of a mutual State of Local Emergency for debris removal, excluding hazardous materials, through the County's Solid Waste Department; and

WHEREAS, the County and Village desire to cooperate with each other to provide solid waste collection, billing, customer services and disposal services to newly constructed residential and multi-family units, including prefabricated units, and disposal for commercial buildings within the Village of Estero municipal boundaries; and

WHEREAS, the County relies on certain administrative procedures that pertain to Lee County Solid Waste Ordinance No. 11-27, and requires the Village to provide certain information pertaining to the addition, modification, and/or deletion of residential, multi-family, and commercial structures, including prefabricated homes, issuance of a USE permit, and issuance of a local Business Tax Receipt within the Village limits in order to ensure the collection and disposal of MSW and payment to the County for such services; and

WHEREAS, both the County and Village are duly empowered to enter into this Agreement for MSW Collection, Billing, Customer Services and Disposal Services (Agreement); and,

WHEREAS, the Board of County Commissioners has deemed the development and utilization of an Integrated Solid Waste Disposal and Resource Recovery System ("System") to be necessary for the public health and safety of Lee County, in that it will promote the sound management of solid waste, a reduction of the solid waste volume to be disposed of in landfills, development of recycling programs and of more efficient and environmentally acceptable means of solid waste disposal;

NOW THEREFORE, in consideration of the foregoing, and of the mutual covenants and conditions hereinafter set forth, the Village and the County, intending to be legally bound, hereby agree as follows:

SECTION I PURPOSE

It is the purpose and intent of this Agreement to define the terms and condition of the County's provision of solid waste collection, billing, customer services and disposal services, including those for newly constructed residential, multi-family, and commercial units, and the

provisions for hurricane debris management and disposal to the Village, and the terms and conditions under which the Village shall participate in said program. This Agreement is intended to:

- a) provide to the Village solid waste collection services, utilizing the County's contracted franchise collector (hauler) for MSW, vegetative waste, and recyclable materials during the term of this Agreement
- b) provide to the Village solid waste billing and customer services utilizing the County's pre-existing Interlocal Agreement with the Lee County Tax Collector for billing services and the Lee County Solid Waste Department for customer services for the term of this Agreement,
- c) provide the Village with comprehensive solid waste management services,
- d) provide for the Village such solid waste disposal capacity as may be necessary and to dispose of additional MSW from the Village, and,
- e) provide the County with all of the MSW, vegetative waste, and residential recycling material generated from within the Village (excluding hazardous waste), in order that the same shall be delivered to the County's System, and
- f) provide to the Village a means for debris removal and disposal when the Village Council of Estero and the Board of County Commissioners of Lee County declare a State of Emergency that requires the activation of the County's disaster debris removal and monitoring contractor(s).

If any provision of this Agreement is deemed ambiguous, those applicable terms and conditions shall be interpreted in a manner consistent with, and in furtherance of, the purposes as set forth above.

SECTION II

AUTHORITY FOR AGREEMENT

The Village represents to the County that the execution and delivery of this Agreement for MSW Collection, Billing, Customer Services and Disposal has been duly authorized by all appropriate actions of the Governing Body of the Village, has been executed and delivered by an

authorized officer of the Village, and constitutes a legal, valid and binding obligation of the Village. The County represents to the Village that the execution and delivery of this Agreement has been duly authorized by all appropriate actions of the Governing Body of the County, has been executed and delivered by an authorized officer of the County, and constitutes a legal, valid and binding obligation of the County.

SECTION III DEFINITIONS

Words or phrases used herein and not otherwise defined, shall have the meanings given thereto in Section 403.703, Florida Statutes. In addition, the following terms shall mean:

- A. “Governing Body of the Village” shall mean the Village Council for the Village of Estero.
- B. “Governing Body of the County” shall mean the Board of County Commissioners of Lee County.
- C. “Municipal Solid Waste (MSW)” shall consists of everyday items we use and then throw away, such as product packaging, grass clippings, furniture, clothing, bottles, food scraps, newspapers, appliances, paint, and batteries. This comes from homes, schools, hospitals, and businesses.
- D. “Tipping Fee” shall mean the fee paid for disposal of solid waste, based on the tonnage disposed by the Village into the County’s Integrated Solid Waste Disposal and Resource Recovery System.

SECTION IV COUNTY SOLID WASTE RESPONSIBILITIES

Pursuant to the terms of this Agreement between the Parties, the County is and shall be responsible for the collection, billing, customer service, and disposal of MSW, vegetative waste and residential recyclable material from within the Village. The County shall operate, maintain and administer the County’s System, or shall cause the same to be so operated,

maintained and administered so as to be capable of collecting and disposing the MSW, vegetative waste, and residential recyclable materials from the Village. The County shall be responsible for handling all residues generated by the System and for the management and disposal of any bulk MSW delivered to the System during any period of the System's shutdown.

The County shall not be liable to the Village for any changes to the operation of the System as the result of events beyond the reasonable control of the County, e.g., Force Majeure or changes in federal or state law. However, the County shall use its best efforts to provide an economical and lawful alternate disposal method for the Village's MSW, should such change or event occur.

SECTION V VILLAGE'S SOLID WASTE RESPONSIBILITIES

The Village agrees, through regulatory and legislative actions, to ensure all of its MSW, vegetative waste, and residential recyclable materials are delivered to the County's System, or other County designated facilities, for the term of this Agreement. The Village shall have no rights to any proceeds or economic benefits derived from the County's disposal of the Village's MSW, vegetative waste, or recyclable materials.

SECTION VI COUNTY'S DISTASTER RECOVERY AND DEBRIS MONITORING SERVICES RESPONSIBILITIES

The Village may contract with the service providers utilized by the County for Disaster Recovery Services and Debris Monitoring Services for collection and transport of disaster debris to the County's Debris Management Sites. The contract must include the same terms

and conditions as set forth in the County's contract(s) and the contractor(s) must agree to utilize one or more of the County's designated Debris Management Sites.

The County will provide processing, transport, and final disposal of the Village's debris once accepted at the Debris Management Sites, through the County's contractor(s). The Village must pay the County's actual cost plus administrative charges of 5% of the total actual cost or \$1,000.00, whichever is greater. The Village agrees to make payment within forty-five (45) calendar days from receipt of County's invoice for Services. If requested, the Parties may share each other's debris load ticket database for mutual use. The County is responsible for seeking reimbursement from FEMA and/or the State of Florida for County generated debris. The County will invoice the Village for payment based on the volume of processed or burned horticultural waste, volume of mulch disposed, volume of disposal of construction debris, and other similar and related services.

SECTION VII VILLAGE'S DISTASTER RECOVERY AND DEBRIS MONITORING
SERVICES RESPONSIBILITIES

In the event of a mutual State of Local Emergency, the Village agrees to provide the County with a copy of each load ticket for material brought to the County's Debris Management Site. These load tickets will determine the total number of cubic yards from the Village to the County's Debris Management Site and will be used to calculate the associated costs (i.e. site management, grinding, hauling of mulch, disposal of construction and demolition material, etc.) to be invoiced to the Village. The County and Village will use these load tickets to reconcile the volumes.

The Village is responsible for seeking reimbursement from FEMA and/or the State of Florida for collection and transport of generated debris to County designated Debris Management Sites and cost for the County to dispose of material.

SECTION VIII COUNTY RESPONSIBILITY – SOLID WASTE COLLECTION,
BILLING, CUSTOMER SERVICES AND DISPOSAL TO NEW
CONSTRUCTION

The County shall provide MSW collection, billing, customer services and disposal to newly constructed residential and multi-family units, including prefabricated homes within the Village of Estero upon notification that a certificate of occupancy has been issued by the Village. Before September 1st of each year, the County will provide its approved Solid Waste Assessment rates and charges for the upcoming Fiscal Year to the Village. The Village must pay the County on a monthly basis for any unbilled solid waste collection and disposal services provided to the number of new residential units that received a certificate of occupancy within the Village during the previous month.

The County will provide the Department of Revenue, the Lee County Tax Collector, and the Lee County Property Appraiser with notice regarding changes, additions, and deletions to the Lee County Solid Waste Assessment Roll, in accordance with the information provided by the Village and/or its designated service provider.

SECTION IX VILLAGE RESPONSIBILITY – NEW RESIDENTIAL AND MULTI
FAMILY CONSTRUCTION

Before issuing a certificate of occupation for a residential dwelling unit, including that of a prefabricated home, the Village will collect the Solid Waste Assessment for each dwelling unit for the remainder of the fiscal year from each permit holder. The entire Solid Waste Assessment for the coming fiscal year must be collected from the permit holder for each dwelling unit if an application for a certificate of occupancy is received during the month of September. By the end of each month, the Village's Community Development Office, or its contracted service provider, will compile and electronically submit to the Lee County Property Appraiser and the County's Solid Waste Department a report of all permits and/or property owners that received a certificate of completion and/or a certificate of occupancy in the previous month (STRAP Number, Property Owner, Address, Number of Units, Buildings Square Footage, Permit Number, Type of Permit, and the amount of Solid Waste Assessment fee collected), see Attachment A.

On a weekly basis, the Village will provide to the County a copy of all completed Garbage Verification Forms from applicants issued a Local Business Tax Receipt and USE permit (Attachment B).

SECTION X DISPOSAL RATES AND OTHER CHARGES

The Parties agree that the County will, in its sole discretion, determine and set the disposal rates and take other necessary and lawful steps to establish funds for the use and operation of the System as further described herein. The solid waste collection charges shall be those as adopted by the BoCC annually and based on the current and future County MSW and recyclables franchise collection agreements (as amended). The System tipping fee for solid waste

disposal shall be the same as those fees and charges provided for similar users within the unincorporated areas of the County, for the term of this Agreement. The operations, recycling, right-of-way cleanup and other surcharges, if collected, shall be collected by the County on all MSW generated in the Village and the County will continue to provide those services for the term of this Agreement.

As part of the transition of MSW collection, billing, and customer services to the Village and as further consideration for this Agreement, the County agrees to provide to the Village one and one-half percent (1.5%) of the County's current total solid waste collection franchise fees, that the County collects from its contracted franchise hauler, for the prorated portion of collection services that are provided within the corporate limits of Estero beginning October 1, 2015.

For the balance of the term of the Agreement, and as further acknowledgement of the transition of the MSW collection franchise, the County agrees to provide to the Village the following percentage of the County's current solid waste collection franchise fees:

Fiscal Year 2016/2017 - 2.5% and the County will retain 3% of the County's total 5.5% franchise fee,

Fiscal Year 2017/2018 - 3.5% and the County will retain 2%, of the County's total 5.5% franchise fee,

Fiscal Year 2018/2019 - 4.5% and the County will retain 1%, of the County's total 5.5% franchise fee,

Fiscal Year 2019/2020 - 5.5%, and the County will retain 0%, of the County's total 5.5% franchise fee, and thereafter.

SECTION XI TERMS OF THE INTERLOCAL AGREEMENT

This Agreement shall terminate on September 30, 2020, the County has the option to renew this Agreement for an additional thirty (30) year term. Notice of the County's decision to exercise its Option must be made no later than 90 days prior to the termination date.

SECTION XIV SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

SECTION XV ASSIGNMENT

No assignment, delegation, transfer, or novation of this Agreement or part hereof, shall be made, unless approved by the Village and the County.

SECTION XVI NOTICES

Any notices or other documents permitted or required to be delivered pursuant to this Agreement, shall be delivered to the County, at the Office of the County Manager and to the Village, at the Office of the Village Manager.

SECTION XVII AMENDMENT

This Agreement may only be amended in writing, duly executed by the Village and the County.

SECTION XVIII CONSTRUCTION

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

SECTION XIX DEFAULT

If either Party breaches the terms of this Agreement, the non-breaching party shall provide written notice of the default. If the breaching party does not cure the default within thirty (30) days from the date the notice is sent, , the non-breaching Party may terminate this Agreement and recover all costs and damages resulting from the breach of this Agreement. Any outstanding funds owed to the breaching party may be used to offset the damages and costs incurred by the non-breaching party. The right to off-set is not intended to limit the non-breaching party's right to any other remedy available in law or equity.

Failure of a Party to exercise its rights in the event of any breach by the other Party shall not constitute a waiver of such rights. No Party shall be deemed to have waived any failure to perform by the other Party unless such waiver is in writing and signed by the waiving Party. Such waiver shall be limited to the term specifically contained herein. Nothing in this Interlocal Agreement shall be construed to create a cause of action for consequential damages for delay.

SECTION XX BOOKS AND RECORDS

The Parties shall have reasonable access to the books, records, and accounts of the agents, designees or vendors duly contracting with either Party for the purpose of fulfilling any of their obligations under this Agreement.

SECTION XXI FILING

This Agreement and any subsequent amendments hereto shall be filed with the Lee County Clerk of the Circuit Court, Minutes Department, and the Clerk of the Village.

SECTION XXII HOLD HARMLESS – INDEMNIFICATION

The Village shall hold the County harmless, and indemnify the County from the Village's negligent acts or omissions, to include the acts or omissions of the Village's employees or agents, with respect to the Village's performance under this Agreement. The Parties agree that by execution of this Agreement, neither Party will be deemed to have waived its statutory defense of sovereign immunity, nor increased its limits of liability as provided for at Section 768.28, Florida Statutes.

SECTION XXIII RESERVATION OF RIGHTS

Nothing in this Agreement shall be deemed nor interpreted to prohibit, preclude or otherwise pre-empt the County's rights or ability to take any other lawfully available actions to provide funding for the System.

SECTION XXIV ATTORNEY'S FEES AND COSTS

If either Party brings or commences legal action or proceeding to enforce the terms of this Agreement, the prevailing party shall be entitled to recover the costs and

expenses of litigation, including attorneys' fees.

IN WITNESS WHEREOF, the Village and the County have executed this Interlocal Agreement of the day, month, and year first written above.

ATTEST:
LINDA DOGGETT, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chair

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY:

By: _____
Office of the County Attorney

ATTEST:

VILLAGE OF ESTERO

By: _____
Village Clerk

By: _____
Mayor

APPROVED AS TO FORM:

By: _____
Village Attorney